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1 (PROCEEDINGS HELD IN OPEN COURT AT 1:08 P.M., ATLANTA)

2 (Court Announced)

3 COURTROOM DEPUTY CLERK: The Court has set aside time  
4 for a sentencing in the United States v. Ryan Felton, Case  
5 1:20-CR-347.

6 Counsel, will you please make your appearances for the  
7 record.

8 MS. SNEED: Good afternoon, your Honor. Assistant  
9 United States Attorney Sekret Sneed. And also with me here today  
10 is Assistant United States Attorney Nathan Kitchens. And from the  
11 FBI we have Special Agent Ryskoski. And at the back table Special  
12 Agent Joe Stites and Special Agent Marissa Priestley.

13 THE COURT: Okay. Thank you.

14 MR. LOWTHER: Good afternoon, your Honor. Joshua  
15 Lowther for Mr. Felton. And Mr. Felton is at counsel table with  
16 me.

17 THE COURT: Good to see both of you as well.

18 And we have Officer Ridley.

19 OFFICER RIDLEY: Yes. Good afternoon, your Honor.

20 THE COURT: Thank you for being here as well. Good to  
21 see you.

22 Mr. Felton pled guilty on July 14th of this year to  
23 Counts 1 through 3, 6 through 11, 13 through 22 and 24 through 28  
24 of the superseding indictment.

25 In accordance with Rule 32 of the Federal Rules of

1 Criminal Procedure the US Probation Office has conducted a  
2 presentence investigation and prepared a presentence report, a  
3 copy of which has been provided to both the government and the  
4 defense.

5 And, Mr. Lowther, have you and your client had an  
6 opportunity to read and discuss the presentence report?

7 MR. LOWTHER: We have, your Honor.

8 THE COURT: Do you have any questions about the  
9 presentence report or any amendments now other than what's been  
10 previously filed?

11 MR. LOWTHER: Excuse me?

12 THE COURT: Do you have any questions about the  
13 presentence report or any amendments now other than what's been  
14 previously filed?

15 MR. LOWTHER: No, your Honor.

16 THE COURT: Thank you.

17 From my review I believe we have three issues to  
18 discuss. One involves the restitution amount. And the other two  
19 involve the enhancement for characteristics of the offense and the  
20 reduction for acceptance of responsibility. Are there any other  
21 issues other than those three, counsel?

22 MS. SNEED: Not that the government is aware of, your  
23 Honor.

24 MR. LOWTHER: No, your Honor.

25 THE COURT: I know as to restitution, although it was

1 originally pegged at or about 2.4 or 2.5 Million. It looks like  
2 the government now is seeking the lesser number of \$659,476.44.

3 Is that still at issue?

4 MS. SNEED: Your Honor, that number has actually been  
5 adjusted upwards. We did hear from three additional victims. And  
6 I spoke to Mr. Lowther before the hearing, and it appears that the  
7 defendant is not contesting the restitution as to all of the  
8 victims except for one. And so the parties are just going to meet  
9 and confer about that particular victim. And we would ask that  
10 the Court continue out the restitution for up to 90 days. And  
11 we're more than likely going to reach an agreement as to the  
12 restitution number, and we'll file something with the Court.

13 THE COURT: All right. So all are in agreement, then,  
14 we'll just push out the restitution discussion for a later date?

15 MR. LOWTHER: Yes, your Honor. Thank you.

16 THE COURT: Very well. That leaves us with two issues,  
17 then.

18 The first one is the sophisticated means enhancement  
19 under 2B1.1(b)(10)(C). Let me hear from everybody on that issue.

20 MS. SNEED: Yes, your Honor.

21 Your Honor, the sentencing guidelines defines the  
22 sophisticated means enhancement as offense conduct that is  
23 especially complex or especially intricate. Case law in the  
24 Eleventh Circuit tells us that the totality of the scheme has to  
25 be sophisticated, it's not judged by each conduct.

1           The PSR and the government's sentencing memo, which I  
2 assume the Court has reviewed, lays out the basis for this  
3 enhancement, so I won't go into detail about what's already been  
4 laid out for the Court, but I did just want to highlight a few  
5 things as to why this enhancement applies here.

6           And it's not solely because this case involved  
7 cryptocurrency. Really the core of the sophisticated means  
8 enhancement is everything almost else except for the  
9 cryptocurrency. It's the fact that the defendant, as laid out in  
10 the PSR, made multiple misstatements to the public. The defendant  
11 took steps to trick the public by putting the white paper on the  
12 Internet, the white paper for both schemes that are at issue here,  
13 the FLiK scheme and the CoinSpark scheme. The defendant made  
14 numerous lies to investors in order to trick them into investing  
15 in his cryptocurrency schemes. The defendant even went so far as  
16 to hatch this idea of creating a dividend for the cryptocurrency  
17 platform in the CoinSpark scheme.

18           It was the defendant's specialized knowledge and skill  
19 that led him to be able to defraud people into investing into the  
20 FLiK scheme, which, as the Court may remember, was that sort of  
21 Netflix-type idea, and the CoinSpark scheme, which was the  
22 cryptocurrency platform.

23           And if the Court recalls from the trial testimony, the  
24 dividend -- the potential dividend from the CoinSpark or  
25 cryptocurrency platform scheme was particularly important to

1 people. So the defendant had to have specialized knowledge as to  
2 what a dividend would mean to people, what it would mean to the  
3 market, what it would mean in terms of the cryptocurrency world.

4 And the defendant also -- yes, cryptocurrency is a part  
5 of this case and it is important here. As the Court is aware,  
6 yes, many people have heard of cryptocurrency as the jury said  
7 during voir dire, but the defendant had a particular knowledge and  
8 skill that he was able to use to trick people into investing into  
9 his schemes. And also to hide the proceeds from that scheme.  
10 Only because the defendant knew how to create these accounts in  
11 order to get the proceeds to a place where he could then transfer  
12 it to his traditional bank account at Wells Fargo, that all  
13 required specialized knowledge. And as the Court heard at trial,  
14 cryptocurrency is anonymous. That's the whole point of it.

15 So for all those reasons, because of the especially  
16 complex and intricate parts of the whole scheme, not just one  
17 particular act, the government contends that the sophisticated  
18 means enhancement applies.

19 THE COURT: All right. Thank you.

20 MR. LOWTHER: Your Honor, as Ms. Sneed stated, 2B1.1,  
21 application note (9)(b) defines sophisticated means as especially  
22 complex or especially intricate offense conduct pertaining to the  
23 execution or concealment of the offense. And this in the last ten  
24 years, as the Court well knows, has become almost an ubiquitous  
25 enhancement.

1           So I believe the analysis should look at the specific  
2 conduct of the offense and not conduct in general. So what I mean  
3 is a cryptocurrency scheme is necessarily more complex than, for  
4 example, inflating your income on an application for a loan or to  
5 get a credit card by e-mail. So you shouldn't look -- you  
6 shouldn't consider this enhancement in the context of this is a  
7 cryptocurrency scheme. And I understand the government says it's  
8 not based on that but really it is. That's what all these charges  
9 are about.

10           And there was no conduct in this case -- and, of course,  
11 the Court had the benefit of a few days of a trial here, so this  
12 isn't just, you know, a stipulation of facts where you're reading  
13 this in the presentence report. You actually heard evidence in  
14 this case. And there was no conduct by Mr. Felton that was not  
15 actually necessary to commit this offense.

16           If you look at the presentence report in support -- for  
17 example, the probation officer's assertion in support of the  
18 enhancement, false statements concerning how proceeds of  
19 investments would be used, the amount of funds needed, false  
20 statements to investors, false statements to induce individuals to  
21 invest, the government even says in its sentencing memorandum, and  
22 it reiterated today, it was also based on Mr. Felton's specialized  
23 knowledge of cryptocurrency or his ability to understand  
24 essentially that realm. But when you consider the conduct as  
25 alleged and you consider the conduct that was shown by the



1 evidence, the testimony of the government's witnesses, he didn't  
2 do anything that wasn't necessary to actually commit this offense.

3           The main issue here, obviously, or the main issue at  
4 trial was, until he pled guilty, his specific intent to fraud.  
5 And all of the conduct that both the probation officer and the  
6 government is alleging that rises to the level of especially  
7 complex or especially intricate really isn't any more than what he  
8 needed to do to commit the offense.

9           So when you consider that conduct in the scope of  
10 exactly what the charges or the offenses are -- I know there are  
11 multiple counts -- versus, for lack of a better way to describe  
12 it, a garden variety fraud case, wire fraud, mail fraud securities  
13 fraud, any kind of fraud, it simply doesn't rise to the level of  
14 especially complex or especially intricate.

15           THE COURT: Thank you.

16           All right. I believe the sophisticated means  
17 enhancement is appropriate here. The language we look at under  
18 2B1.1(b)(10)(C) is the offense otherwise involves sophisticated  
19 means, and the defendant intentionally engaged in or caused the  
20 conduct constituting sophisticated means. And if we look at note  
21 (9)(B) as to how sophisticated means is defined, it means an  
22 especially complex or especially intricate offense conduct  
23 pertaining to the execution or concealment of the offense. I  
24 believe the government has shown that in spades in this case.

25           This case involved false statements to investors,

1 prospective investors, involving both the FLiK token and Spark  
2 coin in order to pump the price of the assets so that the  
3 defendant could then in turn dump his own tokens at an inflated  
4 price. And I believe this applies when I look at the totality of  
5 the scheme, that it was sophisticated under the *Barrington* case,  
6 648 F.3d 1178 at 1199.

7           And if we look at the two schemes here -- first off as  
8 to the FLiK scheme, I think it's been shown that the defendant did  
9 use extensive knowledge of trading these digital assets on the  
10 cryptocurrency platforms, holding those FLiK tokens himself. He  
11 made false statements regarding the platform itself. His  
12 intention to burn unsold tokens so that those would not be sold or  
13 used. His participation involving notable entertainers to help  
14 him with that scheme. He noted that there were purportedly large  
15 dollar investors that there were not. And then after all this he  
16 then sold his tokens under an anonymous account in the  
17 cryptocurrency platform. The scheme involved several accounts,  
18 both trading accounts, bank accounts, to facilitate that  
19 concealment.

20           As to the CoinSpark team, it involved other individuals  
21 in helping to run the scheme. The defendant actively hid his own  
22 involvement, going so far as to deny his involvement in it. He  
23 took advantage of his own sophisticated knowledge regarding the  
24 creation of companies including outside of the United States in  
25 lucrative foreign markets.

1           So, in sum, I do believe it was both complex and  
2 intricate. And I think this is consistent with the findings of  
3 *Altomare* case and the *Muzio* case, 673 F.App'x 956, and the second  
4 one is a number 920327.

5           Let's move onto the next issue, which is whether or not  
6 there should be a reduction for acceptance of responsibility.

7           MS. SNEED: Your Honor, it is the defendant's burden to  
8 prove that, but I will go first if that's what the Court would  
9 like.

10           THE COURT: No, that's fine. I'm happy to hear from  
11 Mr. Lowther first.

12           MR. LOWTHER: Guideline Section 3E1.1 does set some  
13 parameters in its general language. If the defendant clearly  
14 demonstrates acceptance of responsibility for his offense,  
15 decrease by two levels. If permitting the government to avoid  
16 preparation for trial or preparing for trial, decrease by one  
17 additional level.

18           Application Note 2, it's not intended to apply to a  
19 defendant who puts the government to its burden of proof at trial  
20 by denying essential factual elements of guilt, is convicted and  
21 only then admits guilt and expresses remorse.

22           So certainly Mr. Felton is not entitled to -- the  
23 government has no obligation, nor should it move for a third level  
24 for acceptance. Obviously we're not in that situation. But even  
25 though we were a few days into trial, Mr. Felton did plead guilty.

1 Not only did he plead guilty, he actually accepted responsibility  
2 for his conduct. He stood here, you heard his allocution. He  
3 didn't minimize his conduct or in any other way try to mitigate  
4 what it was.

5           This is a little difficult -- this is a little difficult  
6 because it's so factually specific, and that's why I said that the  
7 guideline itself just set some parameters. So the first line  
8 there is "if the defendant clearly demonstrates acceptance of  
9 responsibility for his offense." It doesn't say when he does it.  
10 It just says "if he clearly demonstrates acceptance of  
11 responsibility." And Mr. Felton has done that in the case.

12           The other side is, again, allowing the government time  
13 to avoid preparing for trial and to better allocate the resources  
14 of the court. We're certainly not at that extreme either. So the  
15 question becomes should or is this downward adjustment appropriate  
16 based on the timing of his plea. When I say it's difficult, for  
17 every one case that you find that it's appropriate, you find five  
18 cases that says it's not and vice versa. So it is just such a  
19 factually-specific finding that the Court has to just look at  
20 these particular facts and at this particular timing.

21           And he did not wait until a jury found him guilty. He  
22 pled guilty. It wasn't the government's -- it wasn't even the  
23 government making an offer. At some point in trial he approached  
24 the government, through me, of course, we would like to plead  
25 guilty. We notified the Court. There wasn't a plea agreement.

1 There wasn't any incentive for him to plead guilty other than to  
2 actually admit his conduct and avoid this verdict. And, again, he  
3 did that. He didn't present any witnesses. He didn't perjure  
4 himself at trial. And I'm not suggesting that he would have done  
5 that, but he didn't do anything outside of -- or he didn't -- his  
6 conduct certainly wasn't such that would take it outside of what  
7 part A of 3E1.1 considers.

8 I'm sure the government would have preferred not to try  
9 the case. I understand that. And I'm sure Ms. Sneed will tell  
10 you -- or the government will explain what its position is. But I  
11 don't think the Court has to look any further than the fact that,  
12 again, without some incentive such as a plea agreement where the  
13 government agreed to limit the criminal exposure, et cetera, you  
14 know, charge bargaining, some guideline concession, et cetera, he  
15 simply pled guilty. And in this particular case the Court should  
16 reduce the guideline range by two levels.

17 Candidly he deserves some credit for actually having  
18 done that. He could have had the government put on the rest of  
19 its case. He could have put on a one-, two-, three-, four-day --  
20 I'm not saying this would have happened in this particular case  
21 because we estimated a much shorter time, but he could have done  
22 all that and made the jury find him guilty, and he would be in the  
23 same position then as he's in now.

24 So while we -- I don't want to use the word "entitled,"  
25 he's not entitled to anything because the Court does have

1 discretion. There should be some recognition respectfully that he  
2 pled guilty, did not require the government to go through the  
3 entire trial, did not take that time as opposed to actually having  
4 done that where, again, his guideline -- recommended guideline  
5 range would be the same.

6 THE COURT: All right. Thank you.

7 Ms. Sneed.

8 MS. SNEED: The Eleventh Circuit has held that the  
9 defendant must do more than just prove that he pled guilty in  
10 order for him to get an acceptance of responsibility decrease.  
11 Particularly in a situation like this where we did go to trial,  
12 there were three days of trial. And in the application notes,  
13 application number 1, application note 1, in terms of  
14 considerations that the Court can look at timeliness, which is  
15 application note 1(a)(H), is listed. And the Eleventh Circuit has  
16 noted that timing is an appropriate consideration for the Court to  
17 look at.

18 And the reason timing is so important when it comes to  
19 acceptance of responsibility is exactly what this case  
20 demonstrated. This wasn't just a simple trial with a couple  
21 witnesses that drove up the road. As the Court may recall, we had  
22 numerous international witnesses. Numerous may be exaggerating,  
23 but we had at least three or four international witnesses,  
24 victims, who had to travel all the way here to America to testify  
25 in this trial. And I will let the Court know that that was more

1 than an ocean to get international victims to come to the United  
2 States under subpoena from the United States. We had to involve  
3 other components within the Department of Justice for that to  
4 happen. The United States can't just go knock on the door of  
5 someone in the Netherlands and say, Come to testify in our trial.  
6 It involves a whole process.

7           Not only that, the government called an expert witness.  
8 The government had to pay that expert witness. And if the Court  
9 recalls, she -- Beth Bisbee, she came and testified for I believe  
10 a couple of hours. And she also had to prepare to testify. And  
11 this was -- it involved cryptocurrency, of course, as we said  
12 several times, but our expert is an expert in that field. And in  
13 order to get her to be able to break that down to a level that all  
14 of us could understand who are not experts in the field, that also  
15 took a lot of time.

16           And then, of course, one of the cases that I believe  
17 that I cited in the sentencing memo mentioned the inconvenience of  
18 the jurors. The jurors had to come to this courtroom three days  
19 at the very least. Actually it was the fourth day, they were here  
20 when the defendant pled guilty that morning.

21           So, your Honor, I think that all of that should go  
22 towards the Court's consideration of not giving the defendant this  
23 two-level increase. And I'll also just note that I believe the  
24 sentencing guideline or maybe it was an Eleventh Circuit case said  
25 that it is not a right for the defendant to get this decrease.

1 The defendant must actually show acceptance of responsibility.  
2 And the government contends that the defendant has not met its  
3 burden here and the decrease should not apply.

4 THE COURT: All right. Thank you.

5 Anything else from the defense?

6 MR. LOWTHER: No, your Honor.

7 THE COURT: All right.

8 I do not believe that the defendant's met his burden of  
9 demonstrating acceptance of responsibility. Certainly he did  
10 eventually enter a plea on the third day of trial here. But as I  
11 look under 3E1.1(a) and the application note, there's various  
12 considerations.

13 He truthfully admitted that he did that belatedly, but  
14 the timeliness, that's under (a) and then under (H), I think the  
15 timeliness is important here. As Ms. Sneed just noted, this was a  
16 complex trial and getting the witnesses here was not easy. There  
17 were multiple international witnesses as well as an expert  
18 witness.

19 As I look at the other factors, (B) through (G) under  
20 application note 1, whether he voluntarily terminated or withdrew  
21 from the conduct, whether he voluntarily paid restitution, whether  
22 he voluntarily surrendered, whether he voluntarily assisted the  
23 authorities, whether he voluntarily resigned, any post-offense  
24 rehabilitation efforts, I have not seen anything from that argued  
25 by the defense. So I think in sum this is not a situation where



1 he has clearly demonstrated his acceptance of responsibility.

2 I would note that normally under application note 2,  
3 when somebody puts the government to the burden of proof at trial  
4 is not entitled to this. However, it's important that the  
5 Constitution right to a trial doesn't preclude getting acceptance  
6 of responsibility. There are situations in which you can put the  
7 government to the burden and still get the benefit of this. But I  
8 think based on the considerations here under note 1 he's not  
9 entitled to it.

10 I'll, therefore, adopt the findings of fact and  
11 conclusions of law in the presentence report to which no objection  
12 has been made. And as to these two where there were objections,  
13 again I'm finding the sophisticated means enhancement should apply  
14 and that the acceptance of responsibility reduction should not  
15 apply.

16 Based on these findings of fact and conclusions of law  
17 the guideline calculations are as follows:

18 Base offense level of 7;

19 Adjusted offense level of 28;

20 A total offense level of 28;

21 Criminal History Category of I;

22 Recommended sentencing range of 78 to 97 months;

23 Fine guideline range of 25,000 to \$4,998,797.22;

24 Term of supervised release of 1 to 3 years;

25 And a special assessment of \$2,400.

1 Any objection to the guideline calculation as stated by  
2 the Court other than what's been previously stated?

3 MS. SNEED: Not from the government.

4 MR. LOWTHER: Not other than previously stated.

5 THE COURT: Very well.

6 I'll now hear from the parties as to recommendations for  
7 a reasonable sentence concerning 18 USC, Section 3553(a) factors.  
8 I have reviewed the presentence report and the government's  
9 sentencing memorandum.

10 Are there any other documents or letters for the Court  
11 at this time?

12 MS. SNEED: Not from the government.

13 MR. LOWTHER: No, your Honor.

14 THE COURT: Are there any victims present that wish to  
15 speak or present evidence in connection with the sentence in this  
16 case?

17 MS. SNEED: No, your Honor.

18 THE COURT: Any witnesses on behalf of the defendant  
19 other than perhaps himself?

20 MR. LOWTHER: No, your Honor.

21 THE COURT: Mr. Lowther, if you would like to make an  
22 argument on behalf of your client, I would be happy to hear from  
23 you, sir.

24 MR. LOWTHER: Thank you, your Honor.

25 Despite my disagreement with the probation officer on

1 only two points on the presentence report, I believe it is very  
2 thorough, and it covers everything that the Court needs to be  
3 aware of to impose sentence in this case.

4 I would like to underscore just a few points. Again,  
5 Mr. Felton is now going through a divorce. That was born of this  
6 case. And, of course, he's pled guilty to what he's done and that  
7 was his own doing. But, nonetheless, that is something he's  
8 suffering right now.

9 He and his soon-to-be former spouse do have a  
10 five-year-old child, as the Court's aware, who was diagnosed with  
11 autism. And I think -- just from my knowledge I think Mr. and  
12 Mrs. Felton are doing the very best they can do under the  
13 circumstances to support him, but obviously the child needs both  
14 parents. And we're not so naive as to think the Court is not  
15 going to impose a term of imprisonment in this case, but the  
16 sooner Mr. Felton can be back with his son obviously the better.

17 And, of course, we're not deflecting what an appropriate  
18 sentence would be in this case saying, Oh, we just had this issue.  
19 But when you look at Mr. Felton, which obviously you have to do  
20 under these factors under 3553(a), you look at his particular  
21 circumstances. And these are circumstances that he's enduring  
22 even though they are of his own making, that the average person  
23 without those circumstances would not have to endure in this case.  
24 And, candidly, I don't think a lengthier term of imprisonment --  
25 given those circumstances and given his understanding that he

1 needs to be back to support his son, I don't think a lengthier  
2 term of imprisonment is necessary for him to understand that the  
3 conduct was wrong and for him not to repeat the conduct again,  
4 which is one of the factors, two arguably, of what the Court  
5 should consider when imposing the sentence.

6 I would like to bring the Court's attention to the  
7 mental health issue in paragraph 179 -- excuse me, the family  
8 history issue in paragraph 179. I think that's certainly relevant  
9 to this. And the mental health issue in paragraph 186. That was  
10 a latent diagnosis after trial as a matter of fact. So how that  
11 could have or would have played into this case, candidly it wasn't  
12 known to Mr. Felton and, therefore, it wasn't brought to my  
13 attention in time to even determine that. But, nonetheless, I  
14 think it's appropriate for the Court to consider what that is.

15 So given those facts and given those circumstances and  
16 based on the argument, even though I understand the Court's ruling  
17 regarding acceptance of responsibility and its application of the  
18 guidelines, the Court can still consider his acceptance of  
19 responsibility under 3553(a), specifically under just punishment.  
20 So, again, the question becomes without -- at the risk of  
21 oversimplifying this, how much time does Mr. Felton need to serve  
22 in prison to realize that his conduct was wrong, to realize that  
23 he should not repeat his conduct, and, of course, to let the  
24 public know the seriousness of the offense? Don't do this,  
25 deterrence. If you do this, you will face a penalty. And based

1 on the circumstance of -- Mr. Felton's particular circumstances  
2 we're asking the Court to impose a sentence not to exceed  
3 46 months.

4           The difference in 46 months and a sentence within the  
5 advisory guidelines, it wouldn't make the difference under the  
6 specific factors in 3553(a) as I just stated. And, of course,  
7 a sentence not to exceed 46 months would certainly be --  
8 certainly -- if not greater than necessary -- sufficient if not  
9 greater than necessary to comply with what the Court is supposed  
10 to consider under 3553(a)(2).

11           At the appropriate time I would like to be heard  
12 regarding a recommended designation and a release pending  
13 execution of sentence.

14           THE COURT: All right. I would be happy to hear from  
15 you about both of those now.

16           MR. LOWTHER: We would respectfully ask the Court to  
17 recommend FPS Montgomery, Alabama. Based on my understanding that  
18 would be the facility of the appropriate security classification  
19 closest to his permanent residence. And, of course, the purpose  
20 for that recommendation or the purpose for our asking for that  
21 recommendation is so that he would be able to see his family  
22 without any undue hardship if he's in a greater place.

23           Regarding release pending execution of sentence, the  
24 Court obviously has discretion as in everything else, but 3143  
25 states that after a conviction -- and the burden is the same

1 pending execution of sentence as it is pending sentencing. So if  
2 the defendant demonstrates by clear and convincing evidence that  
3 he's not a risk of flight and he's not a danger to the community  
4 or any other person in the community, then the Court shall allow  
5 him to remain on release at this point pending execution of  
6 sentence.

7           So the Court necessarily made that finding after  
8 Mr. Felton's plea of guilty because obviously he's on pretrial  
9 release now. The burden hasn't shifted, so I respectfully suggest  
10 that the analysis now should be what has happened since his  
11 release pending sentencing --

12           THE COURT: Let me interrupt you and ask Ms. Sneed, do  
13 you object to him turning himself in at a later date, perhaps  
14 after the 1st of the year?

15           MS. SNEED: The government does not object.

16           THE COURT: How long were you thinking, Mr. Lowther? I  
17 know he's got, you know, a five-year-old son with autism or  
18 Asperger's.

19           MR. LOWTHER: We respectfully ask for 90 days.

20           THE COURT: I think that's fine. Ms. Sneed, any  
21 objection to 90 days?

22           MS. SNEED: No objection, your Honor.

23           THE COURT: And I'll also recommend FPC Montgomery.

24           One other question on this is I note the diagnosis that  
25 he's had referenced in 186. Are there any requests that I

1 recommend he be placed somewhere with mental health counseling?

2 MR. LOWTHER: No, your Honor.

3 THE COURT: Okay. Very well. All right. Thank you.

4 Mr. Felton, I've had the benefit of hearing from your  
5 counsel, but if there's anything you would like to say personally  
6 before I sentence you, I would be happy to hear from you now, sir.

7 THE DEFENDANT: Your Honor, over the last few months  
8 I've had time to ruminate over everything that's transpired. And  
9 I take full responsibility for my actions and my behavior. I'm  
10 embarrassed by it. I'm ashamed by it. I wish it had never  
11 happened. And I apologize to everyone that I affected. I  
12 apologize to the government. I apologize to this court.

13 You may impose your sentence when ready.

14 THE COURT: Okay. Thank you. And, sir, my condolences.  
15 I see while all this was going on you lost your father, who I  
16 understand was of your two parents the one that was most important  
17 to you growing up, so my condolences on that.

18 THE DEFENDANT: Thank you.

19 THE COURT: Ms. Sneed.

20 MS. SNEED: Thank you, your Honor. And once more, our  
21 argument is laid out in our sentencing memo, but I do want to  
22 highlight a couple of things.

23 First, I would like to note that the defendant's ideas,  
24 these two schemes, the FLiK and the CoinSpark, were actually, I  
25 think, really good ideas. The FLiK, it was supposed to be this

1 Netflix type of situation that emerging and independent artists  
2 could get their projects funded and developed. And then there was  
3 this cryptocurrency platform where you get a dividend.

4           The problem came when the defendant got the money from  
5 investors and did nothing to execute these schemes. These two --  
6 not schemes but these two ideas. He sold this bill of goods to  
7 investors and prospective investors, who I think we heard  
8 testimony all thought they were great ideas like I did and wanted  
9 to see something like this.

10           And then instead of trying to actually make these ideas  
11 come to life, he used that money for his own lifestyle. And the  
12 things that he bought, I think, were particularly egregious. He  
13 paid \$1.5 Million for this all cash -- in all cash for a house in  
14 Buckhead that now, according to the PSR, is worth 1.6 Million. He  
15 bought these cars. He bought jewelry. All that sort of stuff.  
16 It just really goes to the nature and circumstances of this  
17 offense and why it is particularly egregious. It just shows a  
18 level of greed.

19           The defendant through his previous profession and  
20 business and the film industry, it seemed like he had the ability  
21 to make money and to have a comfortable lifestyle, but instead he  
22 chose the easy way out. For that reason, just to put it up front,  
23 as I noted in our sentencing memo the government is asking for a  
24 sentence within the guidelines and in the middle of the range of  
25 the guidelines.



1           The other thing I wanted to point out for the Court in  
2 terms of the nature and circumstances of the offense is that the  
3 defendant used his actual friends to help him carry out this  
4 thing. If the Court recalls, it heard from Chance White, Owen  
5 Smith and also Will Sparks who all seemed to consider the  
6 defendant a friend. In fact, I remember I believe it was  
7 Mr. White, he couldn't even look at the defendant. He just seemed  
8 really emotionally disturbed by the fact that he had to be here.

9           But it wasn't just the fact that the defendant used his  
10 friends in order to execute these schemes. He didn't give them  
11 any money for all the work that they did to help him do it. He  
12 kept every single penny. And not saying that it would have been  
13 better if he had shared fraud proceeds, but the fact that he knew  
14 that all of this was a fraud and he used his friends and then  
15 didn't even give them any of the proceeds of it, it just also  
16 seems particularly egregious to me.

17           I'll note that the history and characteristics of the  
18 defendant don't necessarily weigh one way or the other. The  
19 defendant has no real criminal history, at least no felony  
20 convictions. But the government does believe that a sentence at  
21 the middle of the guidelines would reflect the seriousness of this  
22 offense.

23           It's a very serious offense to defraud the public into  
24 trying to support something that seemed sort of innovative and  
25 interesting when it was never going to happen. And then to

1 repeatedly lie to the public about the fact that it was being  
2 developed, it was being built as the Court may recall hearing from  
3 the testimony at trial.

4 Middle of the guideline sentence would also promote  
5 respect for the law. And it would be a just punishment. And it  
6 also would be needed to deter not just the defendant -- and  
7 because this scheme went on for so long, there may be an issue of  
8 deterrence for the defendant but also for the general deterrence,  
9 for the public to know. Cryptocurrency is in the news a lot. And  
10 a lot of times it's about something negative happening with  
11 cryptocurrency. And so there needs to be a message that this is  
12 something that the government will prosecute when it's done  
13 unlawfully, and the people who perpetuate these schemes need to  
14 realize this is not a game to trick people into giving you money  
15 so that that person can use those funds for their own gain.

16 And also I will note that this middle of the guideline  
17 range sentence recommendation by the government takes into account  
18 that the defendant has completely agreed to forfeiture and it's a  
19 significant amount of forfeiture. He's agreed to the forfeiture  
20 of his house. The Court -- the government filed the consent  
21 preliminary order of forfeiture, which I also have here if the  
22 judge needs another copy. But he also had his wife -- or maybe  
23 she did on her own, but she also signed over her interest to the  
24 house. So that just streamlines that forfeiture process. And I  
25 believe there will be an agreement as to restitution. So that is

1 why the government is recommending that middle of the guideline  
2 range sentence.

3 So unless the Court has any other questions, that's the  
4 government's recommendation.

5 THE COURT: You know what, I printed out the consent  
6 preliminary order of forfeiture, but I'm trying to save the paper  
7 so I printed it out on -- four pages on one sheet, so I can't  
8 really sign this version. If you have a copy you can give  
9 Ms. Lee, that will be helpful.

10 MS. SNEED: I do, your Honor.

11 THE COURT: Okay. Thank you.

12 Any other matter that the Court needs to take up or  
13 anything else from either side before I issue a sentence in this  
14 case, counsel?

15 MR. LOWTHER: No, your Honor.

16 MS. SNEED: Not from the government.

17 THE COURT: All right. I've signed the consent  
18 preliminary order of forfeiture. I want to take a short break and  
19 think about a few things I've heard. So give me let's call it  
20 maybe ten minutes or so, might be a little longer than that.  
21 Thanks, everyone.

22 (After a recess, the proceedings continued as follows:)

23 THE COURT: Mr. Felton, if you can please stand, sir.

24 Pursuant to the Sentencing Reform Act of 1984 it's the  
25 judgment of the Court that you, Ryan Felton, are hereby committed

1 to the custody of the Federal Bureau of Prisons to be imprisoned  
2 for a term of 70 months custody as to Counts 1 through 3, 6  
3 through 11, 13 through 22 and 25 through 28 to be served  
4 concurrently.

5 Sir, you can be seated while I read the rest of your  
6 sentence to you.

7 You must pay to the United States a special assessment  
8 of \$2,400 due immediately. The assessment should be paid to the  
9 Clerk of the US District Court, Northern District of Georgia. The  
10 Court finds that you do not have the ability to pay a fine and  
11 cost of incarceration. The Court will, therefore, waive the fine  
12 and cost of incarceration in this case.

13 A determination of restitution will follow as previously  
14 discussed at this hearing.

15 As to the financial penalties, you must pay those in  
16 accordance with the schedule of payment sheet on the judgment.

17 Payment of criminal monetary penalties are due during  
18 the term of imprisonment. All criminal monetary penalties except  
19 those made through the Federal Bureau of Prisons Inmate Financial  
20 Responsibility Program are to be made payable to The Clerk,  
21 US District Court, 2211 US Courthouse, 75 Ted Turner Drive,  
22 Southwest, Atlanta, Georgia 30303. Any balance that remains  
23 unpaid at the commencement of the term of supervision shall  
24 commence within 60 days after release from imprisonment on the  
25 following terms:

1 Payable at a rate of no less than \$250 a month to the  
2 US District Court.

3 You must notify the Court of any changes in economic  
4 circumstances that might affect the ability to pay this financial  
5 penalty.

6 The Court determines that you do not have the ability to  
7 pay interest and it's ordered that the interest requirement is  
8 waived for restitution.

9 Upon release from imprisonment, you'll be on supervised  
10 release for a term of three years as to each of the mentioned  
11 counts to be served concurrently.

12 You must comply with the mandatory conditions of  
13 release.

14 You must not commit another federal, state or local  
15 crime.

16 You must not unlawfully possess a controlled substance.

17 You must refrain from any unlawful use of a controlled  
18 substance.

19 You must submit to one drug test within 15 days of  
20 release from imprisonment and at least two periodic drug tests  
21 thereafter as determined by the Court.

22 You must cooperate in the collection of DNA as directed  
23 by the probation officer.

24 You must make restitution in accordance with 18 USC,  
25 Sections 3663 and 3663(a) or any other statute authorizing a

1 sentence of restitution.

2 As part of your supervision you must comply with the  
3 standard conditions of supervision. These conditions are imposed  
4 because they establish basic expectations for your behavior while  
5 on supervision and identify the minimum tools needed by probation  
6 officers to keep informed, report to the Court and bring about  
7 improvements in your conduct and condition.

8 The standard conditions of supervision will be included  
9 in the judgment.

10 You must comply with the following special conditions  
11 during the term of supervised release:

12 You must make full and complete disclosure of your  
13 finances and submit to an audit of your financial documents at the  
14 request of your probation officer.

15 You must provide the probation officer with full and  
16 complete access to any requested financial information and  
17 authorize the release of any financial information. The probation  
18 office may share the financial information with the US Attorney's  
19 Office.

20 You must not incur new credit charges or open additional  
21 lines of credit without the approval of the probation officer.

22 You must submit your person, property, house, residence,  
23 vehicle, papers and computers, other electronic communications or  
24 data storage devices or media or office to a search conducted by a  
25 US Probation Officer. Failure to submit to a search may be

1 grounds for revocation of release.

2           You must warn any other occupants that the premises may  
3 be subject to searches pursuant to this condition. An officer may  
4 conduct a search pursuant to this condition only when reasonable  
5 suspicion exists that you violated a condition of your supervision  
6 and areas to be searched contain evidence of this violation.

7           Any search must be conducted at a reasonable time and in  
8 a reasonable manner.

9           You must permit confiscation and/or disposal of any  
10 material considered to be contraband or any other item which may  
11 be deemed to have evidentiary value of violations of supervision.

12           The defendant is to report for service of the sentence  
13 no earlier than 90 days from today. Release conditions previously  
14 established will continue to apply. Failure to report for service  
15 of sentence is a criminal offense.

16           Although the Court does not have the authority to select  
17 the detention facility, it can recommend one. And it respectfully  
18 recommends to the Bureau of Prisons that the defendant be housed  
19 at FPC Montgomery, Alabama.

20           This sentence is made in view of the sentencing goals  
21 delineated in 18 USC, Section 3553(a) and the parties' arguments  
22 as to those factors, including:

23           The nature and circumstances of the offense and the  
24 history and characteristics of the defendant;

25           The need for the sentence imposed to reflect the

1 seriousness of the offense;

2 To afford adequate deterrence and to protect the public;

3 The kinds of sentences available;

4 The kinds of sentence in the sentencing range

5 established for the applicable category of offense committed as

6 set forth in the sentencing guidelines;

7 Any pertinent policy statement;

8 The need to avoid sentencing disparity;

9 And the need to provide restitution to victims.

10 This sentence meets the criteria of punishment,

11 deterrence and incapacitation and is sufficient but not greater

12 than necessary to comply with the directives of Section 3553(a).

13 Based on these considerations, I find that this is a

14 just and appropriate sentence.

15 I elected to vary downward one level from 78 to 97 to 70

16 to 87. The defense had asked me to vary downwards five levels,

17 which I did not think was appropriate. And the government asked

18 me to sentence within the guideline range.

19 The nature and circumstances of the offense are, of

20 course, incredibly important here. This was a very complex scheme

21 to defraud investors in two different ways, two separate schemes.

22 And I can't ignore the gravity of the offense here.

23 And as Ms. Sneed noted, what the defendant did with the

24 proceeds, buying a Ferrari, buying jewelry, it's almost something

25 you would see in a Hollywood movie and not in real life, but it is



1 real life and the defendant really did that.

2 But when I look at this defendant, I think there is some  
3 good here as Mr. Lowther has shown. He has consented to the  
4 forfeiture of the house I think most importantly. And albeit  
5 belatedly, he did eventually decide to accept responsibility. And  
6 I will say that his statement that he made in court today was  
7 persuasive to the Court. I believe that he is indeed remorseful  
8 and not just acting.

9 We didn't talk about it a lot in the arguments, but, you  
10 know, what I do day in, day out it seems like is sentence people  
11 who have been dealing drugs, some of whom grew up in the poorest  
12 neighbors in Atlanta and joined a gang when they were 12 years old  
13 and those type of childhood situations. And that's not exactly  
14 what we had here. But I think that Mr. Felton's history and  
15 characteristics are important in coming up with this sentence.

16 He was physically and emotionally abused as a child,  
17 including locked in a closet. And I note that he made a statement  
18 to the probation officer that he was a difficult child. We now  
19 know that he, like his son, suffered from undiagnosed Asperger's  
20 as well. And the fact that he has a five-year-old son with  
21 Asperger's that needs him is also something that factored into  
22 this sentence. But having a son that needs him isn't a reason in  
23 and of itself to just vary downwards. There's a lot more to it  
24 than that as discussed.

25 I think that avoiding disparity is important here, so I

1 was not inclined to vary downward more than one level. I think  
2 deterrence is important. Given what I think is genuine remorse  
3 perhaps specific deterrence not so much but general deterrence is  
4 important, whether it's this type of fraud involving  
5 cryptocurrencies or something not as modern as this, I think that  
6 society and others who might want to engage in this type of fraud  
7 know that it will be punished not just with a slap on the wrist.

8           And I do, again, commend him for his willingness to  
9 consent to the forfeiture. And I'm hopeful that the victims will  
10 receive some restitution.

11           And I will say, Mr. Felton, it does seem like with your  
12 life when it rains, it pours. I understand you've got a divorce  
13 proceeding that you're engaged in. I'm sentencing you to a  
14 significant jail sentence. And, again, you have my condolences  
15 about the loss of your father.

16           The record should also reflect this sentence would have  
17 been the same irrespective of my ruling on the disputed guideline  
18 issues that were resolved in favor of the government. In other  
19 words, I would have sentenced the defendant to the same term of  
20 incarceration even if I had not ruled in the government's favor on  
21 those issues.

22           I have previously signed the forfeiture order as  
23 discussed.

24           Before I advise the defendant of his appeal rights, does  
25 the government or defense have any further objections to the

1 findings of the Court, the guideline calculations or the sentence  
2 or the manner in which it's been pronounced?

3 MS. SNEED: Not from the government, your Honor.

4 MR. LOWTHER: None other than already presented.

5 THE COURT: Very well.

6 Mr. Felton, you can appeal your conviction if you  
7 believe that your guilty plea was somehow unlawful or involuntary  
8 or if there's some other fundamental defect in the proceedings  
9 that was not waived by your guilty plea.

10 You also have the statutory right to appeal your  
11 sentence under certain circumstances, particularly if you think  
12 the sentence is contrary to law.

13 Any notice of appeal must be filed within 14 days of  
14 judgment being entered in your case. If you're unable to pay for  
15 the cost of your appeal, you may apply for leave to appeal in  
16 forma pauperis, or without payment of fees. If you so request,  
17 the Clerk of Court will prepare and file a notice of appeal on  
18 your behalf. On appeal you may also apply for court-appointed  
19 counsel.

20 If you have any further questions about your right to  
21 appeal, I'm sure that Mr. Lowther would be happy to advise you  
22 further on this matter.

23 Mr. Felton, do you have any questions about anything  
24 that I've said at today's sentencing hearing, sir?

25 THE DEFENDANT: No, I do not.

1 THE COURT: Counsel, is there anything else that we need  
2 to discuss?

3 MS. SNEED: Not from the government, your Honor.

4 MR. LOWTHER: No, your Honor.

5 THE COURT: All right. Good to see all of you.

6 Ms. Lee, thank you.

7 Ms. Coudriet, thank you.

8 And to our court security officer, I appreciate your  
9 help as well.

10 Mr. Felton, again, best of luck to you, sir.

11 All right. That concludes this proceeding. Thanks,  
12 everyone.

13 (PROCEEDINGS REPORTED WERE CONCLUDED AT 2:11 P.M.)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA

I do hereby certify that the foregoing pages are a true and correct transcript of the proceedings taken down by me in the case aforesaid.

This the 25th day of January, 2023.

*Penny Pritty Coudriet*

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PENNY PRITTY COUDRIET, RMR, CRR  
OFFICIAL COURT REPORTER